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21186	7590	06/22/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			POTTER, ROY KARL	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/774,923

Filing Date: February 09, 2004

Appellant(s): MA, QING

Ann McCrackin
Reg. No. 42,858
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 6, 2006 appealing from the Office action mailed 10/6/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct, however it includes a conclusion regarding the teaching of Higuchi et al. that is not supported by the reference, and is related to the question presently on appeal.

It should be read as follows:

1) Whether claims 20 and 29 are anticipated under 35 USC 102(b) as being anticipated by Higuchi et al., (U.S. 5,311,500), where Higuchi et al. teaches a barrier structure at a substrate edge and the rejected claims recite a barrier structure proximate a substrate edge.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,311,500

Higuchi et al.

5-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 20 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Higuchi et al.

Higuchi *et al.*, U.S. Patent No. 5311500, discloses a substrate with a moisture barrier. As shown in figure 2, substrate 1 has at least one edge. A first dielectric material 2 is disposed on at least a portion of the substrate. A barrier structure 5a is formed on the dielectric layer proximate to the edge of the substrate.

(10) Response to Argument

The Appellant argues on page 9, beginning in the first line under the heading “B) Argument” that “proximate said packaging material edge” is a phrase that means “near, but not at an edge”. No source for this definition is provided. Instead the Appellant argues in the third line of the same paragraph that each use of this phrase is consistent with “not at the edge, but next or following”, and that Appellant may act as his own lexicographer, “which Appellant has done in the instant application”, as explained in lines 4 – 5.

On page 10, in line 22, Appellant states that “Higuchi’s teachings are always exactly at the edge”, and as such does not meet the Appellant’s definition of proximate.

The Examiner’s position is that a teaching of the moisture barrier at the edge meets the limitation of proximate the edge as the Appellant has not provided adequate support for the definition he wishes the word “proximate” to have in the present application. The question for appeal is whether “proximate said at least one substrate edge” should be interpreted to mean “at or near the substrate edge”, as the Examiner argues or if the definition should be “near but not at an edge” as the Appellant argues he has defined the word in his capacity as a lexicographer.

Appellant argues that “proximate” has a meaning of “near but not at” that is implied by the specification and drawings. The Appellant does not argue that this is the ordinary meaning of the term “proximate” but is instead a special definition, which has been implied by intrinsic evidence of the claim term “proximate”, as explained in line 10 of page 10.

Where Appellant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The Appellant has not indicated specifically where in the written description this redefinition has been made, and the Examiner has not found any such redefinition in the specification

The Applicant also argues that the field of the invention is different than that of Higuchi *et al.*'s disclosure. This is also not found persuasive, as the claims recite a method of fabricating a moisture barrier and this is within the scope of what Higuchi discloses.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Roy Potter - Primary Examiner



Conferees:

Zandra Smith SPE



Drew Dunn SPE